UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,866	11/21/2003	David Paul Limont	MS#303717.01 (5221)	3063

38779 7590 05/13/2010

SENNIGER POWERS LLP (MSFT)
100 NORTH BROADWAY
17TH FLOOR
ST. LOUIS, MO 63102

EXAMINER	
CHEEMA, UMAR	

ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
05/13/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary	Application No.	Applicant(s)	
	10/719,866	LIMONT ET AL.	
	Examiner	Art Unit	
	UMAR CHEEMA	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21 and 24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21 and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03/08/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the Amendment filed on 01/29/2010. Claims 1-21 and 24 are pending in this action.

Response to Arguments

2. Applicant's arguments filed on 01/29/2010 with respect to claims 1-21 and 24 have been considered but are not persuasive. Applicant argument of Lemke (US Pub. No. 2005/0086306) being improper prior art has been fully considered but argument is not persuasive. Applicant submitted a 37 CFR 1.131 Declaration on 09/14/2009 to show invention date was no longer than January 2, 2003. Examiner noted that Declaration was filed for Thomas reference as stated in Applicant's remarks, page 8, lines 1-3, however, Applicant believes that Lemke prior art likewise has an effective data later than January 2, 2003, therefore, it does not qualify as prior art. Examiner would like to state that Thomas reference was not withdrawn because of Applicant's Affidavits but because examiner believed that Lemke reference taught or suggested Applicant's invention better.

3. As to Applicant's arguments with 37 CFR 1.131, in order for an affidavit under 37 CFR 1.131 to establish invention prior to the effective data of a reference, the showing of facts must establish reduction to practice prior to the effective date of the reference or conception of the invention prior to the effective data of the reference coupled to said date to a subsequence reduction to practice or to the filing of the application. In the instant case, Applicant attempted to provide evidence that demonstrate reduction to practice before the filing of Lemke (March 14, 2003).

4. However, it is noted that Applicant has provided couple of exhibits documents to attempt to show reduction to practice.

5. First "Exhibit A and B", are some algorithm along with some codes and some of MSN article pages which most of them shown as blank; however applicant's provided details of how the invention of instant claims maps to the disclosure of Exhibit A and Exhibit B, making it unclear if Exhibit A and B even establishes conception of the claimed invention. For example it is unable to be determined how the Exhibits disclose the limitations of "notification to the client device if the current time is less than the timeout, said timeout being used to determine the maximum time between sync notification to the client device etc. (claim 1). Applicant is relying on Exhibit A, pseudo code and batching algorithm to show such limitation which does not make it clear to one of ordinary skill person. Exhibit Furthermore, Applicant is advised that proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose." See MPEP 715.07(111). Applicant is requested to provide evidence that the claimed invention, in fact, occurred prior to March 14, 2003.

6. Applicant further filed "Exhibits C-G" are email copies (shown as confidential) and some kind of coding, which again unable to determine how the Exhibits disclose each and every limitations of Applicant's claimed invention.

7. Thus, Applicant has failed to demonstrate reduction to practice of the claimed invention prior to March 14, 2003, as Applicant has failed to relate the Exhibits to the claimed invention and has failed to demonstrate that the Exhibits refer to an invention that was reduced to practice, as opposed to simply conceived. Accordingly, Applicant's affidavit under 37 CFR 1.131 has been deemed insufficient to overcome the applied rejection under 35 U.S.C 103 (a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (hereinafter Reed) (US 2002/0095454) in view of Lemke (US 2005/0086306) further in view of Border et al. (hereinafter Border) (2002/0071436).

9. Regarding Claims 1 and 24, Reed discloses the invention as claimed a method to provide a sync notification to a client device comprising the steps of: receiving notification that an event of interest has been received (see par. 0023, par. 0207; a notification is received that meets certain criteria and therefore is of interest); in response to receiving the notification, determining

a state of the client device, said state indicating whether or not the client device has outstanding sync notifications, said state being determined based on a trackingGUID and a syncGUID (see par. 0032, par. 0209; based on comparison of the values of the two identifiers, the sync determination is made); if the state of the client device indicates that the client device has no outstanding sync notifications prior to the receipt the received notification (see par. 0209-0210; the value of the two identifiers are compared to determine if a sync is in order): setting trackingGUID equal to the syncGUID, wherein the syncGUID is updated after each successful device synchronization of the client device (see par. 0209-0210; the version value is updated as a result of successful sync); setting a timeout equal to a current time plus a predetermined value (see par. 0209; the value of the two identifiers are compared to determine if a sync is in order); and sending the sync notification to the client device (see par. 0291-0292; the appropriate action (sync notification) is sent to the client); and if the state of the client device indicates that the client device has at least one outstanding sync notification(see par. 0209-0210; the value of the two identifiers are compared to determine if a sync is in order): not sending the sync notification to the client device if the current time is less than the timeout, said timeout being used to determine the maximum time between sync notifications; and sending the sync notification to the client device if the current time is greater than timeout (see par. [0291]; the appropriate action of deletion or inactivation of the recipient instance and par. [0209]; wherein the values of the two identifiers are compared to determine if a sync is in order).

10. Reed substantially discloses the invention as claimed above but does not explicitly disclose wherein setting the trackingGUID equal to the syncGUID and wherein said timeout

being used to determine the maximum time between sync notification and current time is greater than or is less than a timeout.

11. In the same field of invention Lemke discloses wherein setting the trackingGUID equal to the syncGUID and wherein said timeout being used to determine the maximum time between sync notification and current time is greater than or is less than a timeout (see par. [0131]).

12. It would have been obvious to one of the ordinary skill person in the art of networking to combine the teaching of Reed and Lemke for the composite bandwidth schedule to correspond to the latest possible data delivery schedule that satisfies both ID's or variables.

13. Reed-Lemke substantially disclose the invention as claimed but does not explicitly disclose wherein said setting a timeout equal to a current time plus a predetermined value.

14. In the same field of invention Border discloses wherein said setting a timeout equal to a current time plus a predetermined value (see par. 0239-0240; expiration time of timer indicates maximum length of time and par. 0291-0292; sync notification).

15. It would have been obvious to one of the ordinary skill person to combine the teaching of Reed-Lemke and Border for setting timeouts to make certain other end acknowledges notifications that are sent. Motivation so doing so would have been that the method will be improved toward performing notifications synchronization.

16. Regarding Claim 2, the combination of Reed-Lemke and Border disclose the method of claim 1 further comprising the step of sending the sync notification to the client device if the

trackingGUID equals the syncGUID and the current time is greater than the timeout (see Reed: par. 0291, 0209, Border: par. 0239-0240, Lemke, par. 0131) for the same motivation as above.

17. Regarding Claim 3, the combination of Reed-Lemke and Border disclose wherein Border further discloses the method of claim 2 further comprising the step of setting the timeout equal to the current time plus the predetermined value (see par. 0239-0240).

18. Regarding Claim 4, Reed discloses the method of claim 1 further comprising the step of receiving a device/user configuration file having at least one of the syncGUID and the trackingGUID (see par. 0209; receives a file (communication object) with at least one ID (version value)).

19. Regarding Claim 5, Reed discloses the method of claim 4 further comprising the step of reading the at least one of the syncGUID and the trackingGUID from the device/user configuration file (see par. 0209; reading the id of the file by comparing the value).

20. Regarding Claim 6, the combination of Reed-Lemke and Border disclose wherein Border further discloses the method of claim 1 wherein the predetermined value is fifteen minutes (see par. 0236; a timer preset values ranging from minutes to hours. The value of 15 minutes is within the range specified).

21. Regarding Claim 7, the combination of Reed-Lemke and Border disclose wherein Border further discloses the method of claim 1 wherein the predetermined value is in the range of one to two hours (see par. 0236; a timer preset values ranging from minutes to hours).

22. Regarding Claim 8, Reed discloses the method of claim 1 wherein the step of sending the sync notification comprises sending the sync notification using the SMTP (simple mail transfer protocol) protocol (see par. 0023; sending the notification via email; therefore the protocol of transmission is SMTP).

23. Regarding Claim 9, Reed discloses the method of claim 1 further comprising the step of determining if the client device has received the event of interest (see par. 0292; receiving an acknowledgement message that indicates that the client received the event of interest).

24. Regarding Claim 10, Reed discloses the method of claim 1 wherein the step of receiving notification that an event of interest has been received comprises the step of receiving a trigger event (see par. 0291; notification is triggered as a result of an event).

25. Regarding Claim 11, Reed discloses the invention as claimed at least one computer readable storage medium having computer executable instructions for providing a sync notification to a client device (see par. 0029, 0548), the computer executable instructions performing the steps of: receiving notification that an event of interest has been received (see par. 0023, par. 0207; a notification is received that meets certain criteria and therefore is of interest); in response to receiving the notification, determining a state of the client device, said state indicating whether or not the device has outstanding sync notifications prior to the receipt the received notification, said state being determined based on a trackingGUID and a syncGUID (see par. 0032, par. 0209; based on comparison of the values of the two identifiers, the sync determination is made); determining if a current time is less than a timeout set based on the confidence level of the network wherein the timeout indicates how long to wait to retry sending

the notification to the device; sending the sync notification to the client device (see par. 0291; the appropriate action is sent to the client) if the state of the client device indicates that the client device has at least one outstanding sync notification prior to the receipt the received notification (see par. 0209; the value of the two identifiers are compared to determine if a sync is in order) and the current time is greater than a timeout; and not sending the sync notification to the client device if the state of the client device indicates that the client device has at least one outstanding sync notification prior to the receipt the received notification and the current time is less than a timeout (see par. 0209-0210; the object is discarded or other process takes place if the value indicates no sync is needed).

26. Reed substantially discloses the invention as claimed above but does not explicitly disclose wherein said timeout being used to determine the maximum time between sync notification and current time is greater than or is less than a timeout.

27. In the same field of invention Lemke discloses wherein said timeout being used to determine the maximum time between sync notification and current time is greater than or is less than a timeout (see par. [0131]).

28. It would have been obvious to one of the ordinary skill person in the art of networking to combine the teaching of Reed and Lemke for the composite bandwidth schedule to correspond to the latest possible data delivery schedule that satisfies both ID's or variables.

29. Reed-Lemke substantially discloses the invention as claimed but does not explicitly disclose wherein said setting a timeout equal to a current time plus a predetermined value.

30. In the same field of invention Border discloses wherein said setting a timeout equal to a current time plus a predetermined value (see par. 0239-0240; expiration time of timer indicates maximum length of time and par. 0291-0292; sync notification).

31. It would have been obvious to one of the ordinary skill person to combine the teaching of Reed-Lemke and Border for setting timeouts to make certain other end acknowledges notifications that are sent. Motivation so doing so would have been that the method will be improved toward performing notifications synchronization.

32. Regarding Claim 12, the combination of Reed-Lemke and Border disclose the at least one computer readable storage medium of claim 11 having further computer executable instructions for performing the steps comprising: if the trackingGUID does not equal the syncGUID: setting the trackingGUID equal to the syncGUID; setting a timeout equal to the current time plus a predetermined value; and sending the sync notification to the client device (see Reed: par. 0291, 0209, Border: par. 0239-0240, Lemke: par. 0131).

33. Regarding Claim 13, the combination of Reed-Lemke and Border disclose wherein Lemke further discloses the at least one computer readable storage medium of claim 12 having further computer executable instructions for performing the steps comprising determining if the trackingGUID equals the syncGUID (see par. 0131).

34. Regarding Claim 14, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 3 above).

35. Regarding Claim 15, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 6 above).

36. Regarding Claim 16, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 7 above).

37. Regarding Claim 17, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 4 above).

38. Regarding Claim 18, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 5 above).

39. Regarding Claim 19, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 8 above).

40. Regarding Claim 20, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 9 above).

41. Regarding Claim 21, the claim limitations are substantially same as claimed above and therefore are rejected for the same reason (see claim 10 above).

42. Regarding Claim 22-23, (canceled).

Conclusion

43. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to UMAR CHEEMA whose telephone number is (571)270-3037. The examiner can normally be reached on M-F 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Jr. Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C./
Examiner, Art Unit 2444
/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444